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February 20, 2004

Thomas M. Dorman, Esq.
Executive Director
Kentucky Public Service Commission
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PUBLIC SERVICE
COMMISSION

Dear Mr. Dorman:

Enclosed please find an original and ten (10) copies *Case 2003-00434*
North American Stainless
Response to Opposition to Kentucky Utilities' Motion to Consolidate.

Very truly yours,



Richard S. Taylor

Enclosures

Cc: All Parties of Record

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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PUBLIC SERVICE
COMMISSION

In the Matter of:

TARIFF FILING OF KENTUCKY UTILITIES)
COMPANY AND LOUISVILLE GAS AND) CASE NO. 2003-00396
ELECTRIC COMPANY FOR NON-)
CONFORMING LOAD CUSTOMERS)

AN ADJUSTMENT OF THE ELECTRIC)
RATES, TERMS AND CONDITIONS OF) CASE NO. 2003-00434
KENTUCKY UTILITIES COMPANY)

**NORTH AMERICAN STAINLESS RESPONSE IN OPPOSITION
TO KENTUCKY UTILITIES' MOTION TO CONSOLIDATE**

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February 20, 2004

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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TARIFF FILING OF KENTUCKY UTILITIES) CASE NO. 2003-00396
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NORTH AMERICAN STAINLESS RESPONSE IN OPPOSITION
TO KENTUCKY UTILITIES' MOTION TO CONSOLIDATE

By motion dated February 12, 2004, Louisville Gas and Electric Company ("LG&E") and Kentucky Utilities Company ("KU") requested an order consolidating Case 2003-00396, a matter concerning electric service provided by KU to North American Stainless ("NAS") at certain of NAS' facilities in Ghent, Kentucky, with Case No. 2003-00434, a general electric rate case filed by KU on December 29, 2003. Case No. 2003-00396 previously consolidated a complaint filed by NAS on September 23, 2003, concerning rates and terms for electric service supplied to its electric arc furnace ("melt shop") operation upon the expiration of its current special contract on March 31, 2004, and a subsequent tariff filing by LG&E and KU of a newly created and unusual

tariff intended to apply only to the NAS load that is the subject of the above referenced complaint.

NAS opposes KU's motion to consolidate for the following reasons:

1. Consolidation is unnecessary because NAS is the only ratepayer affected by KU's tariff proposal and the record concerning the NAS complaint and KU's proposed NCLS tariff is substantially complete;
2. Consolidation will impair NAS' ability to plan and conduct its melt shop production due to the uncertainty such action will create concerning the actual rates and terms of service that will apply to the melt shop for several months;
3. Consolidation is unwarranted because the cost of service study filed by KU in Case No. 2003-00434 does not attempt to identify the "particular cost of service" of the NCLS load;
4. The interim rate proposed by KU, temporary imposition of its NCLS tariff subject to refund, is unfair and will subject NAS to unprecedented terms of service that KU has not demonstrated are warranted, *i.e.*, a 5 minute demand interval, and terms that may lead to lost steel production for which NAS would not be reimbursed; and
5. Consolidation of NAS specific issues in the general rate case inevitably will lead to disclosure of commercially sensitive NAS energy usage and billing issues.
6. Consolidation is inequitable given the procedural history of this case, *e.g.*, NAS's request that the Commission establish terms of service/rates, LGE/KU's subsequent tariff filing, and even later filed General Rate Case.

As grounds for its opposition to KU's motion, NAS states as follows:

Background

1. The NAS melt shop uses an electric arc furnace to recycle scrap steel, and NAS treats and recasts the molten steel into various stainless products. This is an energy intensive process that routinely consumes more than 20 million Kwh of electricity in a month, and has an average monthly maximum demand of approximately 76 MW.

2. The melt shop operation is a batch process in which roughly 150 tons of scrap is melted in any given cycle (or "heat"), which requires slightly more than an hour,

on average, to complete. The duration of a heat is a direct function of the level of electric energy supplied to the furnace, and NAS employs an energy management system that takes into account, among other factors, electric demand based on the terms of service provided by KU. In short, to plan daily, weekly and monthly steel production, NAS must know not only the energy and demand rates charged by KU for electric service, but all terms of service, including the basis upon which demand will be measured and billed.

3. In Case No. 2003-00376, NAS filed a complaint, on September 23, 2003, requesting that the Commission establish just and reasonable rates and terms of service for the NAS melt shop upon expiration, on March 31, 2004, of the current special contract. In the Complaint, NAS explained the importance of the Commission establishing fair rates and terms of service for its melt shop operation. NAS further explained that NAS could not continue operations under the three year special contract with KU. The Contract was executed prior to the commencement of operations in February 2002. Actual operating experience established that the contract's terms were inappropriate and resulted in rates that are unjust and unreasonable. Although NAS attempted to negotiate these issues with LGE/KU, NAS was rebuffed. For this reason, NAS gave notice to KU that the contract should not be renewed and allowed to terminate at the end of its initial term. Because NAS must have reasonable terms of electric service and know what terms will apply to its operation, NAS requested in its Complaint that the Commission determine those rates and terms.

4. On October 12, 2003, KU responded to NAS' complaint by filing a proposed tariff for a new rate schedule. The Commission docketed this tariff filing as Case No. 2003-00396. The new rate schedule, which the utility describes as a tariff

generally applicable to any loads that it defines in the tariff as “non-conforming,” is intended to be applicable only to the NAS melt shop load that is covered by the expiring contract. While LG&E filed a parallel tariff proposal, the utilities have acknowledged that there are no existing LG&E customers that would be subject to the tariff, and the NAS melt shop is the only KU load that the utility claims should be placed on the new tariff.

5. Though the Commission, by Order of December 19, 2001 in Case No. 2000-542, granted the request to treat the terms of the contract as confidential, KU’s supporting testimony and exhibits in this docket were premised solely on NAS’ energy use under the special contract. Both NAS’ usage and the rates and terms of the contract are confidential and commercially sensitive. NAS moved to strike the portions of the KU filing that contained confidential NAS rate and usage data. KU subsequently withdrew that information and re-filed those materials on a confidential basis pursuant to 807 KAR 5:001 Section 7.

6. By order dated November 14, 2003, the Commission consolidated the NAS complaint and the KU non-conforming load, or “NCLS”, tariff filing into Case No. 2003-00396.¹ The Commission established a procedural schedule in this matter that was designed to allow for final Commission action before the expiration of the current NAS contract. Discovery has been conducted concerning KU’s NCLS proposal, and NAS filed responsive testimony on January 28, 2004. Kentucky Industrial Utility Customers, Inc. (“KIUC”) has intervened in this docket.

¹ In this order the Commission found NAS’ motion to strike had been rendered moot by KU’s withdrawal and re-filing of those materials as confidential information.

7. On December 29, 2003, KU filed a general electric rate case intended to increase operating revenues to the utility by \$58.3 million annually, or approximately 8.54%, based on year ending September 30, 2003 data. NAS has been granted full party intervenor status in the general rate case. This case has been docketed as Case No. 2003-00434, and the effective date of the proposed rates has been suspended until July 1, 2004.

8. In the rate filing, KU offers a cost of service study and proposes rate adjustments to each of its retail service schedules and classifications. There is, however, no attempt in the KU cost of service study to evaluate or assign costs to an NCLS (“non-conforming load service”) class or customer. The cost study shows only costs allocated to “special contracts.”

KU’s Request For Consolidation and Interim Rates

9. In its February 12, 2004 motion to consolidate, KU argues that the NAS complaint/ NCLS tariff docket should be consolidated with the general rate case for the following reasons:

- a. To insure that NCLS customers, i.e., NAS, “will bear their fair share of the increases based upon their particular cost of service.” Motion at para. 4;
- b. There are no new parties because NAS and KIUC are intervenors in the general rate case. Motion at para.5;
- c. KU’s proposed NCLS tariff is presented in both the complaint docket and the rate case, so there are no new issues created by consolidating the two dockets. Motion at para.5. This, KU represents, would create an “economy of effort” for everyone, including the Commission; and
- d. The revenue impact of placing the NAS melt shop on either the LCI-TOD rate (as NAS requests) or the NCLS rate (as KU proposes) are “best dealt with in the General Rate Case.” Motion at para. 7.

10. Stating that there is no otherwise applicable rate for NAS upon the expiration of the current special contract, KU suggests that the NCLS tariff be applied to the NAS melt shop load on a temporary basis, subject to refund or true-up once the General Rate case is decided. Motion, para. 8.

KU's Motion Should Be Denied

11. In addressing this motion, the Commission should consider that KU intends that the "non-conforming load service" tariff will apply only to the NAS melt shop load. The proposed tariff is a response to the expiration of the NAS special contract. No other KU (or LG&E) ratepayer would be placed on the tariff or subjected to its unique terms. While consolidation of this docket with the KU general rate case will not affect the terms of electric service to any customer other than NAS, it creates immediate and serious problems for NAS that will be exacerbated, not remedied, by KU's proposed interim solution of a temporary application of the NCLS tariff, subject to refund. NAS cannot effectively and economically plan production schedules and price its steel products if NAS does not know what rates ultimately will apply to its electric service, or whether billed demand will be determined in 5 minute or 15 increments. Similarly, NAS cannot be compensated for lost steel production for "system contingency" curtailments authorized under the proposed NCLS tariff on an interim basis that may not be permitted at all in the tariffs approved in the general rate case. Delay resulting from consolidation will unfairly impair NAS's business planning and operations. NAS respectfully submits that consolidation is unnecessary because the established schedule in this docket provides ample opportunity for a final Commission order before the current contract expires on March 31, 2004.

12. KU's argument that consolidation is warranted to ensure that NCLS customers bear a fair share of "their particular cost of service," is belied by the fact that the utility has not filed in the general rate case a cost of service evaluation of the "particular cost of service" of the described NCLS customer. The cost of service study submitted by Mr. Seelye does not distinguish, ascribe costs to, or for that matter, even specifically mention non-conforming load customers. Seelye's cost of service study (Exhibits 4 and 5) allocates costs to "special contracts" but makes no effort to assign costs based on any of the concerns cited by KU's witnesses in their testimony in Case No. 2003-00396 (the NCLS docket). Rather, Mr. Seelye functionalizes and assigns costs based on designated class (not including the contemplated NCLS) contributions to base, intermediate and system hourly peak loads (the "BIP" method). It is not a reasonable, or fair, solution to delay a decision in Case No. 2003-00396 when the rate case does not even offer the particular cost of service assessment KU asserts it needs.

13. The NCLS tariff KU proposes is a dramatic departure from other retail service tariffs in numerous respects in addition to the rates that are proposed (e.g., mandated system contingency curtailments on very short notice, billing demand based on a 5 minute demand interval). KU has not established that the proposed terms or rates are fair, reasonable, or cost-based. KRS § 278.190(3) states that "at any hearing involving the rate or charge sought to be increased, the burden of proof to show that the increased rate or charge is just and reasonable shall be upon the utility." The Commission has been clear that, to carry this burden, a utility must employ reasonable methodologies and provide support for any proposed rate increase. *See, Louisville Gas & Electric Co.*, 204 PUR 4th 196 at 214-15 (2000) (stating that a utility has "the burden of proof to

demonstrate that its approaches and methodologies are reasonable”); *South Central Bell Telephone Co.*, 58 PUR 4th 196 at 199 (1984) (“The statute places the burden of proof for demonstrating that proposed rate increases are just and reasonable squarely on [the utility]. Unprecedented rate increases for [utility] ratepayers cannot be justified by uncertain projections and questionable assumptions.”) The utility’s burden to support a rate increase does not vanish when it proposes to implement the rate on an interim basis, as KU does here. Many states recognize that interim rates, in fact, should be an extraordinary remedy justified only upon a showing by the utility that it would suffer financial harm if the rates do not go into effect on an interim basis.² KU is proposing a new rate schedule (NCLS) that would be significantly more costly and burdensome than the prevailing large customer tariff for customers with usage characteristics most similar to NAS – the LCI-TOD rate. KU has provided no evidence that it will suffer serious financial hardship if it is not permitted to implement the NCL tariff on an interim basis. In fact, as noted above, KU has made no attempt to provide a cost justification for the NCL rate. Further, KU has provided no support for the non-rate terms and conditions in the NCL tariff, although they could substantially increase NAS’ costs and disrupt its operations.

² See, *Questar Gas Co.*, 198 PUR 4th 551 at 554 (UT.P.S.C., 2000) (to justify an interim rate increase, a utility must make a compelling showing that failure to grant such an increase would result in serious financial harm to the utility); *Washington Utilities and Transportation Commission v. Alderton-McMillin Water Supply*, Docket UW-911041, 1992 WL 474739 (Wash.U.T.C., 1992) (noting that criteria for consideration of interim rate relief include: whether an actual emergency exists or whether interim rates or needed to prevent gross hardship or gross inequity, that mere failure of the currently realized rate of return to equal that approved is insufficient standing alone to justify interim relief, the company’s financial indices, and whether denial would cause clear jeopardy to the utility an detriment to its ratepayers and stockholders); Michigan *Consolidated Gas Co.*, 53 PUR 4th 627 (MI.P.U.C., 1983) (noting that a utility must prove a revenue deficiency and a particularized need for additional revenues before the Commission will grant a request for partial and immediate relief).

14. KU's rate filing again discloses the rates contained in the NAS special contract notwithstanding the fact that those terms are confidential, and KU similarly discloses NAS unaggregated usage data, although it should be clear enough that that information is commercially sensitive and has not been disclosed with NAS' permission. Seelye Exhibit 9, pages 1, 24, and 56; and Seelye exhibit 12, p.1 all transparently disclose NAS demand usage, special contract rate and billing data. NAS requests that KU withdraw those customer specific materials from its rate filing. This issue further reinforces the essential fact that the NCLS tariff proposal is ultimately a NAS melt shop-specific matter that should be resolved separately from the general rate case. To resolve the NAS complaint/ proposed NCLS issues, a hearing is required that largely will entail exploration of confidential NAS matters that should not be part of the public rate record. For example, Staff data request #1 in Case No. 2003-00396 asks for NAS to specify the reasons it gave notice to terminate the current special contract. Those reasons may be important to the resolution of the complaint/ NCLS docket, but they are highly sensitive from NAS' perspective, and of absolutely no relevance to the general rate case. Far from creating an "economy of effort" as KU suggests, consolidation will hinder the rate proceedings and may lead to public disclosure of information NAS rightfully considers commercially sensitive.

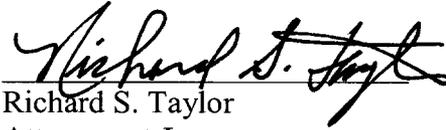
15. KU suggests imposing its proposed NCLS tariff on NAS on an interim basis because, the utility claims, it "has no existing approved tariff under which to provide service to NAS after that [contract expiration] date." Motion at para. 8. This circumstance, however, argues for a prompt resolution of this docket rather than the unwarranted delay that consolidation with the general rate case would require. This, of

course, is precisely the reason why NAS filed the complaint last September seeking relief by April 1 of this year, and why the Commission established a procedural schedule in this docket to accomplish that end. Also, while it does not specify rates, the prevailing LCI-TOD tariff provides that loads greater than 50,000 kw “will have a rate developed as part of their contract based upon their electrical characteristics.” Because KU, as a matter of law, bears the burden of proving the reasonableness of any rate it proposes, the burden is not on NAS to establish that LCI-TOD is the appropriate rate, although NAS has offered testimony in this docket describing why it would be reasonable to apply those rates and terms to the melt shop. If the Commission decides to consolidate this docket with the general rate cast, NAS respectfully suggests that the interim terms of services be governed by the LCI-TOD tariff.

CONCLUSION

For the reasons stated above, NAS urges the Commission to deny KU’s motion to consolidate the NAS complaint/ NCLS tariff docket with the KU general rate case. Further, NAS requests that the Commission decide the matters presented in the NAS complaint/ NCLS docket issues on an expedited basis.

Respectfully submitted,



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Dated: February 20, 2004

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was served on the following persons on the 20th day of February, 2004, United States mail, postage prepaid:

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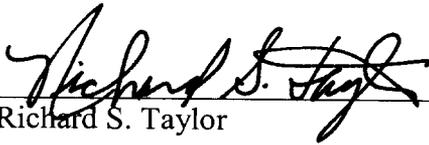
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